

FORM OF GOVERNMENT COMMITTEE

Report to the County Commissioners



June, 2000

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Executive Summary

The Form of Government Committee recommends that the County Commissioners adopt Code Home Rule, and that the question be placed on the November 2000 ballot. November 2000 is preferable to 2002 because it is a presidential election year, insuring a greater voter turnout and more votes cast on the question. Because of an August 21 cut off date for certifying ballot questions to the Board of Elections Supervisors, however, the Commissioners will have to expedite their portion of the process.

The Committee feels that local decisions should be made locally. The Commissioners are in the best position to make these decisions. Code Home Rule would allow a significant additional number and percentage of bills to be enacted without needing to seek approval in Annapolis. The fundamental purpose of Home Rule actually was to alleviate the burden of local bills in Annapolis. As part of a continuing effort to make Home Rule possible in more counties, without the burden, cost and complexity of adopting a Charter form of Home Rule, Code Home Rule was enacted as a Constitutional Amendment in 1966. Since then, five counties have adopted this form. We believe it makes sense for Charles County and has the greatest chance of passage of the two Home Rule forms.

While Charter is considered to be the strongest Home Rule form, our research and prevailing opinion concludes that Code Home Rule counties have substantially the same powers. Unfortunately, to date there is virtually no case law on which to draw definitive conclusions as to the limits of a Code Home Rule county's authority to legislate on the broadest possible array of local matters. Unless and until the courts decide otherwise, however, one should consider the powers under Code Home Rule to be formidable and roughly akin to those granted to Charter counties. In specific crucial areas, such as the cost of running the government, bonding authority, referenda, formality of the legislative process and taxing authority, we find no significant advantage of Charter over Code Home Rule. The Commissioners are retained and no formal changes in the structure of the government - - such as creating two separate branches of government - - are mandated or necessary. Furthermore, the relative ease of how Code Home Rule is adopted and implemented versus Charter make it the logical choice for Charles County.

The Committee also addressed the several other charges it was given. It recommends retention of the Treasurer as an elected office, but also putting the issue of an elected versus appointed Treasurer to the voters in an advisory referendum. It recommends the retention of the police function with the Sheriff's Office. It recommends retention of at-large elections for County Commissioners. It also recommends no formal expansion of the powers of the President of the County Commissioners be considered unless and until the adoption of Code Home Rule.

Commissioners' Charge to Committee and Committee Proceedings

Charge

Pursuant to a recommendation of the County Administrator, the County Commissioners appointed a Form of Government Committee. Its charge was to produce a report which addressed each of the following issues/questions:

- 1) Should the Commissioners initiate one of the two forms of home rule and, if so, which one and why?
- 2) Explain the fundamental differences among the three forms of county government and, as a practical matter, the differences perceived to be significant for the purposes of the panel's recommendations.
- 3) Specify what type of legislation would and would not require State legislative approval were Code Home Rule or Charter to be adopted.
- 4) Specify the evolution in form of government of Maryland's 23 counties.
- 5) Make recommendations on the following organizational/structural issues:
 - (a) Should there be a separate police department, headed by a police chief appointed by the County Commissioners, to perform the police function, or should this function be retained with the elected Sheriff?
 - (b) Should the elected Treasurer's Office be abolished and replaced with an appointed official?
 - (c) Should the manner in which the County Commissioners are currently elected change from an at-large basis to single member districts or some combination thereof?
 - (d) Should the formal powers of the President of the Commissioners be increased?
 - (e) Are there any other changes which should be made not suggested hereunder?

Proceedings

The Committee met eight times from September 1999 to June 2000. The first meeting was organizational/logistical in nature, and served to establish the overall scope

and order of work, with the last meeting held to discuss and edit the final report, take final votes, etc. The other meetings were utilized primarily to receive briefings by various guest speakers and to discuss the reasons for their opinions; asking specific questions of the guest speakers; reviewing and discussing various documents provided by the County Administrator; and detailing the significant factors to be utilized as the basis for the formulation of the Committee's recommendations.

III Forms of County Government in Maryland

There are three types of county government in Maryland - - the County Commissioner form, Code Home Rule, and Charter Home Rule. Both Code Home Rule and Charter offer broader powers to the local County governing body for the exercise of local self government than the traditional Commissioner form (the form under which Charles County currently operates).

Currently, ten (10) counties still have the pure Commissioner form; eight (8) have adopted Charters; and five (5) counties have opted for Code Home Rule. The Code Home Rule option, which, unlike the Charter option, does not require the development of a written document prior to adoption, is the most recent home rule option provided under the Maryland Constitution, ratified by voters in 1966.

Maryland Counties by form of government, and dates of adoption of home rule, are as follows:

<u>Commissioner</u>	<u>Charter</u>	<u>Code</u>
Calvert	Anne Arundel (1964)	Allegheny (1978)
Carroll	Baltimore (1956)	Caroline (1984)
Cecil	Harford (1972)	Kent (1970)
Charles	Howard (1968)	Queen Anne's (1990)
Dorchester	Montgomery (1948)	Worcester (1976)
Frederick	Prince George's (1970)	
Garrett	Talbot (1973)	
Somerset	Wicomico (1964)	
St. Mary's		
Washington		

Evolution

It's interesting to note that those counties operating under either Code Home Rule or Charter forms of home rule went to their present forms directly from the traditional

Commissioner form; to date, there has been no evolutionary migration from Commissioner, to Code Home Rule and then to Charter. If one assumes, as many do, that Commissioner - Code - Charter represents a continuum from weakest to strongest local self governance, it is somewhat surprising that this evolution has not occurred. Perhaps experience with Code Home Rule, now 34 years old, is too new to have yet realized any such migration, or, perhaps it has proved the equivalent of Charter, making any such shift largely unnecessary. The oldest Code Home Rule County is Kent, having adopted Code in 1970.

It should be noted that Montgomery County initially established a Council/County Manager form of Charter government, later revising its Charter to a Council/Elected Executive form. Anne Arundel County used a County Manager form of government, a structure authorized by the General Assembly, until it adopted Charter Home Rule in 1964, providing for an Elected Executive/Council form. Today, Talbot and Wicomico Counties are the only two Charter Home Rule counties in Maryland still operating under a Council/Manager form of Charter.

In the past 27 years, no counties have successfully adopted a charter. In roughly the same time period, four counties have adopted Code Home Rule.

General Powers and Duties of Each Form

Commissioner Form

Prior to 1851, County Courts served as the administrative units of County government. In 1827, Boards of County Commissioners began to administer county governments under authority of the General Assembly, but it was not until 1851 that the term County Commissioners was first constitutionally recognized. Until 1867, they were simply administrative officers, in charge of business and County roads. After 1867, the General Assembly would gradually expand the authority of County Commissioners.

The General Assembly has full power to legislate for Commissioner counties. Article VII of the Maryland Constitution provides for the Office of County Commissioner, leaving to the legislature the power to define the scope of the powers and duties of Commissioners and to set their compensation. Article 25 of the Annotated Code of Maryland addresses the powers and duties of County Commissioner governments throughout Maryland. The Code of Public Local Laws pertains to each County individually and specifically. **As a practical matter, Commissioner Counties have been granted extensive statutory authority to handle local matters under public general and local laws. However, significant variations exist among the authority of individual counties and, in interpreting that authority, courts will strictly construe the scope of the authority granted.**

Article 25, Section 3, sets forth what are known as **express powers** for County

Commissioners. This is important, as under the Commissioner form, unless there is an express grant of power or a statute which **implies** a grant of power, County Commissioners have no right to act. **Express** power is specifically defined and given. Implied powers are those necessarily implied for the proper exercise of those powers expressly confined. Article 25 powers, while **not exclusive**, form a significant number of powers granted to County government. Commission counties have been afforded a significant amount of local authority and discretion in addressing local affairs, something referred to as “statutory home rule”. However, these powers are more limited than those available to counties adopting either Charter or Code Home Rule.

Public General v. Public Local Laws

Fundamental to an understanding of the differences in the power and duties of each form is the distinction between public general and public local laws. The General Assembly has the ability to pass legislation that applies throughout the State. Subject to constitutional limitations, it may also pass legislation for single or multiple political subdivisions. Legislation enacted for **two or more** political subdivisions or which applies statewide is called a **public general law**. Legislation applicable to a **single** jurisdiction is referred to as a **public local law**. The ability of the General Assembly to pass legislation affecting an individual county varies based on the form of government and relevant constitutional provisions.

Under the Maryland Constitution, the General Assembly is in no way limited in passing legislation applicable to single Commissioner counties. Conversely, the constitution does limit the ability of the General Assembly to legislate for a county having adopted either form of home rule. Essentially, under Home Rule, the General Assembly is **prohibited** from enacting local laws relating to that county alone in areas where the county is empowered (through express powers) to act. Where Home Rule counties are not empowered to act, i.e., where constitutional or statutory authority has been retained by the legislature, the General Assembly may still legislate in those counties.

Sometimes conflict occurs between State and county enactments. When such occurs, i.e., when there is a conflict between a public local law passed by a Home Rule county and a public general law passed by the General Assembly, the conflict is resolved in favor of the public general law. In some cases, both the State and local government will have **concurrent** powers in a given area, and the courts will attempt to reconcile the State and local law. Under the concurrent power doctrine, unless a public general law contains an express denial of the right to act by the local subdivision, the State’s regulation of certain authority in a field does not mean that a local government cannot enact laws in that field. In other cases, the State may **preempt** a local law by reserving for itself “exclusive dominion over an entire field of legislative concern”.

Questions frequently arise as to the authority to legislate in a given area. The above discussion highlights that the answer will vary depending on the form of government and

actions taken at the State level. **A county attorney's opinion, even for a Home Rule county, may on occasion be necessary to determine the ability of the subdivision to legislate in a particular area.**

Home Rule from State Perspective

About a century ago, reformers sought to vest cities and counties with the power to legislate on local matters and divest of some control from State legislatures. The movement arose for a variety of reasons, including indignation over excessive legislative interference and insensitivity toward local problems, the desire for local self-governance, and a growing dissatisfaction with the inefficient system of performing local law making functions at the State level.

In Maryland, the effort can best be viewed from the State's perspective - - Home Rule power was an effort to give up what the legislature had difficulty dealing with. According to Victor Tervala, Institute of Government Services, in the early to mid part of the 20th century, 55% to 78% of all bills were found to be local. This inundation of local bills spurred the various attempts to deal with the problem. By the 1970's, local bills as a percent of legislative volume were in the 30% range. **From the State view, Home Rule is giving up the relatively unimportant business and a vehicle to reduce the inundation of the legislature with local bills.** From 1918 to 1970, there were five attempts made by the legislature to deal with the problem of local bills through Home Rule and quasi-Home Rule measures.

Charter

The Charter of a county is best described as a **constitution** of sorts. Charters cover executive and legislative functions and the structure and organization of county government. County ethics, personnel, fiscal and purchasing matters are often addressed. Article XI-A of the Maryland Constitution allows the voters of each county to adopt a Charter under which a locally elected Council is authorized to legislate on local matters expressly authorized by the General Assembly. There may be an elected executive or an appointed county manager prescribed in Charter. The Express Powers for Charter counties are contained in Article 25A, Sections 4 and 5, of the Annotated Code of Maryland. **Section 4 restricts the General Assembly from enacting a local law for a Charter county on any matter covered by the Express Powers Act.** Conversely, a County Charter cannot expand the powers granted under the Express Powers Act. Charters may be amended by the voters, and amendments may be proposed by either the Council or voters. The two processes for adoption of Charter form of government itself is outlined in Section V of this report.

Article 25A grants twenty-eight (28) **express powers** to a Charter county. Among the most significant is the power to repeal or amend local laws previously enacted by the General Assembly. Another very significant power is a **"general welfare" clause**, which

allows the County Council to enact any law not in conflict with the laws of the State “as may be deemed expedient in maintaining the peace, good government, health and welfare of the County.” This authority is also called the “**police power**” and provides general enabling authority for many Charter government enactments.

It is significant to note that a Charter may not grant citizens of a county the **power of initiative**. Initiative is inconsistent with the Maryland Constitution. Nor may the voters legislate through the Charter amendment process. A Charter may, however, authorize citizens of a county to petition a legislative enactment to referendum, similar to the constitutional right of citizens of the State to petition certain legislation passed by the General Assembly in referendum. The Charter specifies the types of laws which may be petitioned to referendum.

Code Home Rule

In 1965, the General Assembly proposed a Constitutional Amendment offering an **alternative form of county government referred to as Code Home Rule**. Before 1965, only four of Maryland’s counties had adopted Charter, perhaps suggesting a need for an alternative form easier and less politically difficult to adopt. The voters ratified this amendment in 1966, adding Article X1-F to the Maryland Constitution. Today, five counties operate under Code Home Rule.

Article X1-F was modeled after the municipal Home Rule amendment to the Constitution. Article X1-F, Section 1, defines “code county” and “public local law”. Further, Article 25B of the Annotated Code, Express Powers for Code Home Rule counties, grants further powers to Code counties in addition to those already granted under public general or public local laws. Code Home Rule counties are granted most of the powers that Charter counties have under their Express Powers Act, Article 25A, Section 5. Article 25B, Section 13, in fact applies all 25A powers to Code counties **other than** Section 5(A), (P) and (S) of Article 25A.

The omission of Sections 5(A) and (P) from Code Home Rule Express Powers is not deemed to be significant. Section 5(A) deals with the enactment of local laws of the County, including the power to repeal or amend local laws enacted by the General Assembly and to provide for enforcement of laws by fines, penalties and imprisonment. Section 5(P) deals with general obligation debt. **Both of these powers are granted Code counties under alternative provisions of law.** Section 5(S) deals with amendments to County Charter (which a Code county does not have) and also grants the **police power** to a Charter county, as follows:

“...The foregoing or other enumeration of powers in this article shall not be held to limit the power of the County Council, in addition hereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provision of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the County.”

Code counties were not, therefore, granted Charter government power to exercise the police power for the purposes of health and safety. **Theoretically, this is the provision which gives Charter counties the greatest degree of independence from the legislature and differentiates them the most from Code counties.** It provides enabling authority for many of a Charter government’s local enactments and, in the early days, courts apparently determined this power was expansive.

Since then, however, courts have apparently been more limiting in their decisions regarding this power. And, despite Code counties not being specifically granted the police power, whether or not there is any real distinction between Code and Charter counties in their ability to legislate is open to debate. The Constitution, Article XI-F (Code Home Rule), defined a public local law in part as a law “applicable to the incorporation, organization or government of a Code county...”. This may have been viewed as sufficient to make the police power granted to Charter counties unnecessary in Code Home Rule counties. The area is open, therefore, to interpretation, with no real court decisions available to clarify this issue. However, the State Attorney General, in a 1979 opinion (see Appendix A), has opined that the constitutional reference to the “incorporation, organization of government” of the County is to be read expansively to refer to “matters of local concern”, and that a **Code county’s authority should be broadly construed.**

There are other differences between Code and Charter counties, which, depending on one’s perspective, may or may not be significant. These include planning and zoning authority, which is exercised by Code counties under Article 66B. Charter counties operate under Charter provisions so drafted and enacted. This permits Charter counties to

establish their own laws and procedures tailored to their own needs. Code Home Rule provides voters in Code counties the power to petition public local laws to referendum. There is no such requirement for Charter counties but, as a practical matter, most Charters contain this right of referendum. State law also requires Charter counties to submit the issuance of bonds to voters for approval or rejection if the Charter contains no such provision and if a petition is filed (some Charter counties' charters require approval of all general obligation bond issues at referendum. Code county bond issues would be subject to referendum under the same provisions as any other bill). A Code county is restricted from enacting any type of tax, license fee, franchise tax or fee unless authorized prior to the adoption of Home Rule or by the General Assembly for all Code counties in a given class. While Charter counties may enact new license and franchise fees, they are not granted general taxing authority by the Express Powers Act, meaning that new taxes generally must also be authorized by the General Assembly. The General Assembly may enact, amend or repeal any property tax cap in a Code county, or may authorize or regulate the maximum amount of indebtedness which may be incurred by a Code county (the General Assembly has not chosen to exercise its authority in either and Article 25B states that the intent of the General Assembly is that this authority should only be exercised when there is a possibility a Code County is imposing an excessive property tax or is incurring excessive debt). For Charter counties, the maximum indebtedness outstanding at any one time is specified in law.

In our judgement, the distinctions between the two home rule forms are relatively minor and, given how the law has been applied and interpreted, we conclude that there is no significant difference between Code and Charter powers, except that in Charter there is a written document.

While the General Assembly may not pass laws special or local in effect for an individual Code county, it may do so for **classes of Code counties**, of which there are four in Maryland, determined geographically by region. This is one way around the prohibition on the General Assembly of enacting public local laws for Home Rule counties. Practically, then, the General Assembly could retain some authority over Charles County by passing local legislation for the Southern Maryland class of Code counties, even if St. Mary's and Calvert were not also Code counties (it would apply to them if and when they became Code counties). **However, the Committee believes that indiscriminate use of this power would be received/perceived as an abuse of power on the part of the local delegation, thwarting the will of the people who voted for Code Home Rule.** This would serve as a brake on the tendency to exercise this authority, as would the fact that the other two counties' delegations would also have to concur in the legislation. It should be noted that the General Assembly may also enact local laws for two or more Charter counties, in essence overriding the local legislative prohibition for Charter counties also.

IV. Conclusions and Recommendations as to Form of Government

The Committee believes the consideration of form of government is best understood and contrasted in table form, rather than in exhaustive narrative. **Table 1, Appendix B, therefore, provides a succinct display of the aspects of each form of government the Committee believed were the most important for County Commissioners to understand in making a decision on what form to pursue.** There are obviously numerous other differences, and nuances among each, not listed on Table 1, but the Committee feels Table 1 does capture the essence of the most critical differences and similarities between the three forms. The items designated with an asterisk (*) denote those deemed particularly noteworthy in supporting the conclusions and recommendations in this Section.

1. **The Committee is unanimous in its belief that local issues should be brought under local control to the extent possible.** This will become even more important as the county gets larger and deals with more issues requiring legislative solutions. The County Commissioners are in the best place to determine local needs and the solutions to those, not a body residing in Annapolis for 90 days a year. The County Commissioners deal with day to day operations and issues 52 weeks a year, are in a position to have the greatest appreciation for the needs to be addressed, and are the most directly responsible for the quality of life for citizens of Charles County.
2. **The exercise of this responsibility, and a greater degree of local control are best achieved under Home Rule powers.** Furthermore, this is totally consistent with the reasons the Home Rule options were created by the State legislature in the first place - - to place responsibility for purely local matters in the hands of local elected officials and relieve the burden of enacting local bills on an already overburdened legislature.

While there have clearly been significant powers granted to Commissioners under the pure Commissioner form through Article 25, Express Powers Act, and various enabling statutes and public local laws, **Table 1 clearly depicts a much greater degree of local control over local issues with adoption of one of the two forms of Home Rule.** With the high level of management and staff sophistication and expertise on-board in Charles County Government to deal with the myriad issues before it, the Committee believes the time is right to transition to a Home Rule form.

3. **The Committee recommends the Commissioners put the adoption of Code Home Rule on the ballot for voter approval or rejection.** While in theory Charter would give the County the greatest degree of independence from Annapolis, we reiterate that we find the two forms in practice actually quite similar in authority. The previously referenced 1979 Attorney General's opinion in a

Kent County matter supports this conclusion. To the Committee, the slight differences among each in powers are not significant enough to warrant the much more arduous, expensive and formidable task of adopting the Charter form of government, at least at this point in time of the County's history. Nor do we think Charter's probability of passage is particularly high given the history of the last 27 years in Maryland. This opinion is reinforced by Mr. Tervala of the Institute of Government Service and certainly is substantiated by past efforts at adopting Charter here.

4. **The Committee believes the Commissioner form basically serves Charles County well and should be retained, but under the Code Home Rule form, reflective of the County's transition from a rural to a suburban/urban County.** We do not believe we are, as yet, of sufficient size or complexity to warrant a Charter form of government, with two separate and sometimes competing branches. While some may disagree, we believe it is simply not necessary at this point in time. Our County is well managed under its Commissioner form, and we doubt the increased costs that would almost certainly occur by virtue of Charter government to be necessary or worth it. On the other hand, we see little, if any, built-in costs for a transition to Code Home Rule. While the County could opt for a County Manager-Council form of government under Charter (as two rural counties in Maryland did), rather than the elected Executive-Council form, and thereby minimize those costs involved with establishing two branches of government, we believe this would make little practical sense. If there is any perceived advantage to Charter, it would certainly be in having primarily one individual, an elected Executive, responsible to the citizens for the functioning of government and in dealings with other Maryland counties. Additionally, it would be possible, at the discretion of the County Commissioners, to vest by ordinance a variety of powers in an appointed manager or administrator under the Code Home Rule form if so desired, without the need to adopt or amend a Charter.
5. The issue of cost of government was extensively discussed and debated, **especially** as to whether Charter was a more expensive form than Code. **In truth, while it is probably impossible to prove or disprove that Charter is more expensive than the Code form from an effectiveness/efficiency of government standpoint, it is apparent, based on the data we could collect, that the cost of government related to staffing and supporting both the County Executive's office and Council offices - - two separate branches of government - - is substantially greater than the comparable offices in the pure Commissioner and Code Home Rule forms.** Two branches of government create the need for clerical and administrative staff for each branch, legislative aides, and even separate legal counsel. While size of jurisdiction certainly plays the most pivotal role in staffing and support costs, **we conclude that Charter, on a per capita basis, would**

be substantially more costly in staffing the elected offices of the government than Code Home Rule or retaining the current form. The additional resources, which would undoubtedly be required, could be better used in enhancing law enforcement, education, or economic development or other essential services than investing in more administrative overhead we believe would result under Charter.

6. **Nor do we see any significant increase in cost by going to Code Home Rule from the pure Commissioner form.** Separate branches of government are not created. Some additional formality in the legislative process would be required under the Code Home Rule form, and some relatively minor expenses related to bill drafting and advertising may result. These would be insignificant within the scope and size of the Charles County budget.
7. In considering a recommendation to adopt Code Home Rule, the question arises as to just how much legislation could be enacted locally that now must be enacted in Annapolis, and is this significant? **Research conducted by Mr. Victor Tervala, Institute of Government Service on this issue concluded that about three of every ten bills that are enacted for Commissioner counties in Annapolis could be enacted locally by Code Home Rule counties.**

A review of the legislative package forwarded by the Charles County Commissioners for introduction in the 2000 session of the General Assembly reveals an even greater proportion of bills which could have been enacted locally; of the twenty-one (21) legislative proposals forwarded by the Commissioners for action, it would appear that nine (9) bills (one or two might have required some modification to have them conform to Code Home Rule authority) could have been enacted locally. Among these nine were the park impact fee proposal; a noise ordinance with civil citations for violation thereof; Commissioners' compensation in the next term; and the enactment of new nuisance abatement provisions related to housing quality. Some of these were not introduced by the delegation.

In the 1999 session, six (6) of twenty-two (22) bills in the Commissioners' legislative package could have been enacted locally. Another two, which were not introduced, may have been enacted locally if modified as to fees. In 1998, four (4) of eleven (11) bills appear that they could have been enacted locally. In any given year, it is apparent that the number and percent which can be enacted locally will vary depending on the issues at hand. In some years, but not every year, the County seeks additional bonding authority, for example. Under Code Home Rule, this would be enacted locally. In years where the County would need to modify its current impact fee, this too could be done locally. These are purely local issues that our elected Commissioners can and should decide.

This would occur only after proper notifications, hearings, worksessions, etc. have been held, in accordance with provisions discussed in 8 below. **These procedures afford a far greater ability for citizens to track, testify and make their views known than on legislation introduced in Annapolis.**

8. **The Committee particularly likes the Code Home Rule requirement related to the form and enactment of local legislation.** In our judgement, this would make it easier for citizens to follow a piece of legislation from beginning to end and possibly effect the outcome. Under this process, the number of days available to introduce and enact legislation is limited to 45 and must be specified in law. An amended bill must not be enacted before it is reprinted and reproduced as amended. Bills introduced must be posted on an official bulletin board, and after passage, the bill or summary thereof must be published in a newspaper not less than 3 times within a four week period. All bills must bear the name or names of the Commissioner(s) introducing it. Unless it is an emergency bill (which requires a 4/5 vote to enact), all bills are effective 45 days after enactment, or later if specified in the bill. Finally, all bills enacted may be petitioned to referendum upon obtaining 10% of the signatures of registered voters. If obtained and verified, the public local law does not then take effect until 30 days after approval of voters at the next Congressional election.

These are provisions we feel will enhance the current process and are desirable in this stage of our County's evolution and development. These processes are superior to what the Charles County process is now, and are much stronger and beneficial for the citizen than how legislation is processed and enacted in Annapolis.

9. **The Code Home Rule form compares very well, in our judgement, to Charter on almost all of the most significant issues and authorities.** Charter government has more authority in the way of new license and franchise fees, but is essentially the same as Code Home Rule in creation of new taxes (both generally need legislative approval to do so). Code Home Rule counties have greater authority in the imposition of impact fees than Charter counties. Both can approve their own structure of government. Both may decide on the compensation of its elected governing body, and both require minimum legislative requirements related to legislative days, publication of proposed bills, etc. While Charter governments have the express grant of the police power to use to draft a wide array of laws, prevailing opinion sees Code Home Rule counties having essentially the same power under a different provision (there is not yet, however, case law which conclusively has decided this issue). **The greater likelihood of passage of Code Home Rule over Charter, and the much more complicated, and potentially divisive effort at drafting a Charter, makes Code Home Rule the logical choice for Charles County.**

V. Procedures for Adopting Home Rule

A. Charter

- (1) **Original Procedure**: This procedure may be initiated only by voter petition. The petition must be for the election at the next general or congressional election of a Charter Board of five members. Signatures of not less than 20% of registered voters, or 10,000 signatures, is required on the petition. Not less than 40 days before the election, the County Commissioners may nominate 5 persons to serve on the Charter Board and not less than 20 days before the election, up to 5 other persons may be nominated by petition (5% or maximum of 2,000 signatures).

If the Charter Board is created by favorable vote, it has 18 months to prepare a Charter. That document is presented for acceptance or rejection at the next general or congressional election. If the Charter is accepted, home rule becomes effective 30 days after the election.

- (2) **Alternate Procedure**: Ratified in 1970, this is much simpler than the original procedure and is the way all future County Charters will probably be adopted.

The initiation of Charter Home Rule can be made either by the County Commissioners or by voters. At any time, the Commissioners may appoint a Charter Board consisting of five (5) to nine (9) registered voters.

Alternatively, the voters may initiate the process through petitions (3% of registered voters, maximum 10,000). Once petitioned, the Commissioners must appoint a Board within 30 days.

Once the Board is appointed under either County Commissioner initiative or voter initiative, the voters may nominate additional members by petition up to the number appointed by Commissioners. If there are such nominations, a special election is held between 30-90 days after recognizing the petition, at which time a Charter Board is selected among those originally nominated by Commissioners and those nominated in the petition.

Once appointed, the Charter Board has 18 months to write a proposed Charter and present it to Commissioners. Following its publication at least twice within a 30 day period following its presentation, it must be submitted to voters at a special or regular election held from 30-90 days after its publication. If accepted, it becomes effective on the 30th day after the election or on a later date specified in the Charter.

(F) **Code Home Rule:**

Code Home Rule can be initiated only when the County Commissioners, by 2/3 majority, propose a resolution that the County become a Code County. The question of accepting or rejecting this resolution must be submitted to the voters at the next general election. The Board must publish notices containing dates, times and places of public hearings concerning the adoption of Code Home Rule. The notice must be published at least three (3) times at weekly intervals and not more than 30 days before the first hearing on the question of Code Home Rule. Within sixty (60) days from the last hearing, the Board must adopt or reject the proposed resolution. Adoption also requires a 2/3 majority.

Following adoption by the Board, the resolution is submitted to voters in the next general election, provided Charter Home Rule is not on the ballot. The ballot allows voters to choose “For adoption of Code Home Rule Status” or “Against adoption of Code Home Rule Status”. Within ten (10) days after reviewing certification of election results, the Board proclaims the results. If a majority of voters favor adoption, the County becomes a Code County on the 30th day after the election.

Code Home Rule Procedure Flow Chart

County Commissioners
by 2/3 vote propose Code
Home Rule Resolution

Board sets dates of public hearings (minimum of two) and advertises at least three times, not more than 30 days before first hearing.

Within 60 days of last hearing, Board adopts or rejects Code Home Rule Resolution

If adopted, question submitted to voters at next General Election

Favorable vote on Code Home Rule?

No

Yes

Code Home Rule Government
effective in 30 days

Retain pure Commissioner form

(C) No Turn-Off Procedures

It is interesting to note that the procedures for adopting Home Rule do not have a “turn-off” feature. Once initiated, the sequence must be completed as provided for under law. It can end only by voter acceptance or rejection of Charter or Code in the appropriate elections. For Code Home Rule, the sequence is considered to begin at the time the Commissioners vote out by a 2/3 majority a Code Home Rule resolution to be placed on the ballot.

(D) Calendar for Adoption of Code Home Rule

The Committee examined whether it would be possible to have the question of Code Home Rule put to voters in the next General Election, November 7, 2000. To do so, it would have to track the following scenario:

C	Effective date of Code Home Rule	December 7, 2000
C	Election Day	November 7, 2000
C	Last day to certify and transmit questions to be put on ballot by Board of Election Supervisors	August 21, 2000
C	Commissioners adopt Code Home Rule Resolution within 60 days of last public hearing	August 21, 2000
C	Public hearing 2	August 8, 2000
C	Public hearing 1	August 7, 2000
C	Notice of public hearing published not less than 3 times at weekly intervals, and not more than 30 days before the first hearing	August 2, 4, 2000 July 19, 26, 2000

C	Commissioners vote to propose adoption of Code Home Rule	July 10 or 11, 2000
C	Briefing by Committee Chair on Report	June 27 or July 3, 2000

The Committee believes it would be desirable to have Code Home Rule placed before the voters in the coming November election. Inasmuch as it is a presidential election, the turnout will be much greater, and more people can be expected to vote on the ballot question than if the Commissioners wait until November 2002. **We also believe it should not be a campaign issue, which is likely to occur if the question waits until November 2002.** It ought to be decided on its

merits, not as a political issue. We believe more people will pay more attention to it, and learn more about it, if proposed as part of this November's ballot.

The downside of this is that doing so would require fairly strict adherence to the schedule above, **which is dictated by the August 21 date**, and the Commissioners may feel uncomfortable with the rapidity of their portion of the process. Some concern was also expressed that the electorate might feel it is too much to absorb within a relatively short time frame and not enough time is left until November 2000 for a thorough consideration of the matter. However, the Committee feels there is enough time for such thoughtful consideration to occur and that the same concerns will always be raised, regardless of the time frame or period of consideration. We believe having it on the ballot in the Presidential election is compelling enough to warrant a slightly compressed schedule. If, after reviewing this report, it is clear to the Commissioners they should propose that Code Home Rule be placed before the voters, we would then urge the process be initiated in accordance with the schedule above.

VI Conclusions and Recommendations on Other Charges

A. Should the Treasurer be an appointed position?

The Committee recommends that the Treasurer be retained as an elected position, but that the question be placed before voters in an advisory referendum. The Treasurer's position is more of a technical and managerial position, rather than a policy making position. Only 11 counties in Maryland still retain the elected Treasurer. There are no educational or experience related qualifications for the position.

Nevertheless, the Committee is reluctant to recommend the elimination of an elected office directly accountable to the citizenry. The Committee also believes safeguards have been put in place which would prevent the type of fiasco which occurred in 1994 with investments in derivatives and subsequent losses of County funds. A firm investment policy, set by State law and the Commissioners, and the separation of the accounting function, now housed in the Department of Fiscal Services, are examples of the safeguards since enacted. Denying the citizenry the right to choose a Treasurer of their choice is an action not to be taken lightly. **At a minimum, they should be able to voice their opinion before such an action is taken.**

It should be noted that a change to the law to permit this to happen would require legislative action in Annapolis at the current time. Were the County to adopt Code Home Rule, the Commissioners could enact such a change. Should the Commissioners decide to recommend changing the Treasurer to an appointed position, the Committee recommends doing so effective with the 2006 election. In other words, the four year term commencing in 2002 and ending in 2006 would be the last under an elected Treasurer.

B. Should the police function be removed from the auspices of the elected Sheriff, becoming a separate Police Department under an appointed police chief reporting to the Commissioners?

The Committee believes the police function should remain under the control of the elected Sheriff. We see no reason to change a system that seems to be working well in Charles County. We also believe it would be more costly to do so, inasmuch as the Constitutional office of Sheriff would still be retained, albeit without the police functions.

While we have not performed studies to verify this in other jurisdictions where the functions have been separated, we intuitively believe this to be the case. There would be separate command staffs. Additional support personnel would be needed in the areas of finance, human resources, public information, purchasing, supply and quartermaster, etc. More space would be required, and sharing space between the two entities would be problematic. Less flexibility in deploying personnel among police, corrections and courtroom security personnel would be a certainty. In our judgement, there would need to

be very compelling reasons to incur such costs. These reasons are not present in Charles County.

Were the Sheriff's Office characterized by the wasting of resources, a pattern of unprofessional conduct, or an inability to achieve acceptable response times or control crime, we might conclude differently.

However, we see no such evidence of this. To the contrary, it appears resources have been effectively deployed to bring crime rates down, and that the force is a very professional one. The Sheriff's Office is aggressively pursuing accreditation assuring in the process even further professionalism and improvement.

It is often believed that it is the small, rural counties that have Sheriff's perform the police functions, leaving the larger, more populated counties to Police Departments. In fact, some of the largest counties in the country, notably in Florida and California, have the police functions performed by Sheriff's departments. Like many of their county and municipal police brethren, these forces are large, professional and very capable. There is no reason to believe the Charles County Sheriff's Office cannot continue to perform the police function well as Charles County grows in population, diversity and complexity.

As compared to Treasurer, the head of the Police function, be it an elected Sheriff or an appointed Chief, is very much a policy making position. This is further reason to retain it as an elected position. It's overriding importance and impact on the community make its direct accountability to the electorate an important factor in considering any such change. Retaining the police functions within an independent, constitutional office makes it easier for the elected Sheriff, as opposed to an appointed police chief, to speak out on a variety of issues, including adequacy of resources, as he does not have to risk his job by offending a group of elected Commissioners. This is a benefit to the community.

Two potential downsides to the elected Sheriff have been most often mentioned: (1) the injection of politics into the election process with rank and file taking sides, and the resulting internal turmoil and possible retribution which could ensue, and (2) the possible election of an unqualified Sheriff, with whom the citizens could be saddled for at least four years.

The Committee believes that political rivalries and taking sides can occur just as easily in an appointed situation as in an elected situation and such have occurred in other jurisdictions surrounding the appointment of a Chief. Because, by law, the Sheriff functions under a merit system, he could not exact wholesale retribution by firing those who supported someone else. In fact, his discretion in retention is limited to his top commanders, and even then they receive an element of protection by being able to return to the rank of lieutenant in the event the Sheriff desired new personnel in those positions.

We also think that the odds of a totally unqualified individual being elected Sheriff are remote. The electorate is more sophisticated than that. We also note that a professional law enforcement staff is in place, which would also tend to mitigate the effect of any election of an unqualified individual in the unlikely event that would occur.

The police function in Harford County, as in Charles County, rests with the Sheriff, outside of the County Executive's direct control. Harford County is unique in this regard, with all other Charter counties in Maryland having police chiefs heading separate police departments, appointed by and responsible to the County Executive. All Commissioner counties - - including Code Home Rule counties - - continue to place the police function under the elected Sheriff.

Yet, the elected establishment in Harford County appears comfortable with the elected Sheriff performing the police functions there. The feeling is that the community is well served by the arrangement, and that the most important aspects on working together to solve problems were communications and the nature of the relationships forged. It was not always necessary for the County Executive and Sheriff to agree on everything, but that this posed no obstacle to the effective policing of the community. There have apparently been two referenda on the question of a separate police department in the County's recent history, and both were defeated.

C. Should the Commissioners continue to be elected at-large, by single member districts or some combination thereof?

The Committee recommends that the current method of electing Commissioners be retained. This provides for all Commissioners running at-large with residency requirements for each of four Commissioner districts. The President does not have to reside in any particular district.

Any move to single member districts would be a step backward. In our judgment, parochialism, vote trading and too narrowly focused decisions would result in any such structure. We believe the all at-large system, but with the four Commissioner districts, strikes exactly the correct balance. It assures all areas of the County are represented, yet maintains the big picture focus and prompts right decisions not just for one area or segment of the population, but the entire County.

The Committee did briefly consider some other combination of electing Commissioners, such as three by district and two at-large, etc. However, with five Commissioners, this would be difficult to structure. Typically, such a structure may be found in larger governing bodies, such as Montgomery County, which has a nine member Council and elects four members at-large and five by single member district.

The Committee also concluded that Charles County was not of sufficient size to

warrant an increase in the number of Commissioner seats, e.g., five (5) to seven (7), where a combination at-large/single member Commissioner district structure might be utilized. The Committee concluded that such increases would probably result in additional staff being required to service such a large board without any clear offsetting advantage, and that one (1) Commissioner per 18,000 people was too small a population segment for each Commissioner to represent.

D. Should the powers and duties of the President be specified and, if so, what should they be?

The Committee recommends no formal, statutory expansion of the powers of the President, especially in the absence of Home Rule. To do so would change the nature of the Commissioner form, without the ability locally to rescind such powers should the County's governing body decide to do so. As a practical matter, the Commissioners do delegate certain responsibilities to the President, particularly in the areas of execution of official documents and in approval of certain purchase orders and contracts. **If, under a Home Rule form, the Commissioners as a body wished to formalize these or other functions in statute, the Committee would find this acceptable.** The necessary ordinances, public notification and hearings would, of course, have to be held prior to any such formalization of powers, giving citizens the opportunity to comment. And, the resulting ordinances later could be revised upon majority vote of the Commissioners without having to go to Annapolis to make a change.

However, it must also be noted that, inherent in the Commissioner form of government, is the principle that Commissioners, as a body, perform both the executive and the legislative functions. **Under the Commissioner form, no single Commissioner has inherent power as an individual.** The Commission acts as a corporate body. **Powers delegated to County Commissioners under State law must be exercised as a Board and not as individuals.** Therefore, if substantial and sweeping changes to the authority of the President were desired, such as the formulation and submission of a budget, Charter Home Rule should probably then be considered. Such powers are akin to an elected County Executive under a Charter form of government.

It may be possible, under Code Home Rule, to structure an organization very much along the lines of a Council-Elected Executive form, with the President serving, in essence, as the County Executive. The limits of such a structure would have to be carefully reviewed by the County Attorney and perhaps the Attorney General. Theoretically, such a structure is possible under Code. But, the fact that the other Commissioners would have to vote to relinquish a large part of their authority, perhaps in conflict to the purposes for which they were elected, makes this an unlikely scenario. Regardless of the structure, however, it would be possible for the same board to rescind those powers under Code Home Rule. **This is an important point and why any formal expansion of authority should only occur under Code Home Rule if and when enacted.**

Appendix A

Code Counties—Code Counties May Enact Legislation on Matters of Local Concern, but General Assembly Has Residual Authority to Enact Legislation for These Counties on Matters of State Concern—Application to Laws Enacted by General Assembly for Kent County.

July 25, 1979

Richard R. Cooper, Esquire

Attorney to County Commissioners of Kent County

This is in response to your request for our opinion on whether the General Assembly exceeded its authority in enacting the following statutes, each of which amends the Code of Public Local Laws of Kent County: (i) Chapter 252, Laws of Maryland 1971 (abolishing the Kent County Shoreline Commission); (ii) Chapter 816, Laws of Maryland 1974 (repealing and amending provisions concerning the judicial system); (iii) Chapter 284, Laws of Maryland 1977 (repealing certain election laws); and (iv) Chapter 733, Laws of Maryland 1977 (creating a people's counsel for zoning matters). In 1970, Kent County adopted "code home rule" under Article XI-F of the Maryland Constitution. The question thus arises as to whether these subsequent enactments violate the general limitation of Article XI-f on the authority of the General Assembly to enact, amend, or repeal public local laws for code counties.

I

Code Home Rule

Article XI-F of the Maryland Constitution, the Code Home Rule Amendment, was adopted as part of the Constitution in 1966. Section 4 of this Article limits the authority of the General Assembly to enact, amend, or repeal public local laws for code counties, as follows:

"Except as otherwise provided in this Article, the General Assembly shall not enact, amend, or repeal a public local law which is special or local in its terms or effect within a code county. The General Assembly may enact, amend, or repeal public local laws applicable to code counties only by general enactments which in term and effect apply alike to all code counties in one or more of the classes provided for in Section 5 of this Article."¹

Section 3 of this Article contains a concomitant grant of authority to code counties to "enact, amend or repeal a public local law of that county";² and this grant of authority has been amplified by the General Assembly in Article 25B of the Maryland Code, Home Rule for Code Counties.

Essential to understanding the limitations on the respective authority of the General Assembly and code counties is the relevant constitutional definition of "public local law." Article XI-F, §1 provides, in part, as follows:

" '[P]ublic local law' means a law applicable to the incorporation, organization, or government of a code county and contained in the county's code of public local laws; but this latter term specifically does not include (i) the charters of municipal corporations under Article 11E of this Constitution, (ii) the laws or charters of counties under Article 11A of this Constitution, (iii) laws, whether or not Statewide in application, in the code of public general laws, (iv) laws which apply to more than

¹Under Article XI-F, §5 of the Constitution: "The General Assembly, by law, shall classify all code counties by grouping them into not more than four classes based either upon population as determined in the most recent Federal or State census or upon such other criteria as determined by the General Assembly to be appropriate." This constitutional requirement has been fulfilled by the enactment of Article 25B, §2 of the Maryland Code, which places all code counties in one class.

²Under Article XI-F, §6 of the Constitution: "A code county may enact, amend, or repeal a public local law of that county by a resolution of the board of county commissioners." however, under Article XI-f, §7: "Any action of a code county in the enactment, amendment, or repeal of a public local law is subject to a referendum of the voters in the county...."

one county, and (v) ordinances and resolutions of the county government enacted under public local laws.”

Although Article XI-F has not been interpreted in any reported cases, this office has considered the meaning of this Article in a comprehensive Opinion issued on December 22, 1977. *62 Opinions of the Attorney General 275* (1977). In that Opinion, we summarized the power of the General Assembly with respect to code counties as follows:

“With respect to the otherwise plenary legislative authority of the General Assembly:

a. With stated exceptions, Article XI-F, Section 4, *explicitly prohibits* the General Assembly from enacting, amending or repealing a law which (i) is applicable to the incorporation, organization or government of a code county; (ii) is special or local in its term *or* effect within the code county; and (iii) is contained in the county’s code of public local laws. The General Assembly may enact, amend or repeal such a law only by general enactments which in term and effect apply alike to all code counties in one or more of the classes provided.

b. With stated exceptions, Article XI-F, Section 4, *implicitly prohibits* the General Assembly from avoiding its complementary provisions by not codifying an enactment in the code of public local laws.

c. With stated exceptions, Article XI-F, Section 4, also *implicitly prohibits* the General Assembly from avoiding its complementary provisions by making an enactment applicable to two but less than all of the code counties in a given class.” *Id.* At 306–07 (footnotes omitted) (emphasis in original).

Because each of the four laws here in question amends the county’s Code of Public Local Laws, the question is whether these laws are applicable to the “incorporation, organization, or government” of the county and are “special or local” in their terms or effect within the county. Although the matter is not free from doubt, we have already expressed the view that the reference in Article XI-F, §1 to the “incorporation, organization, or government” of the county is to be read expansively to refer to “matters of local concern,” as distinguished from matters either wholly or partly of concern to the State. *Id.* At 290–93. Thus, the General Assembly may not enact for code counties any laws that are local in substance, and this prohibition is explicit with respect to laws that are codified in the local code. *Id.* At 304. Therefore, if any of these four laws, which amend the local code, relate to matters of purely local concern, the General Assembly has exceeded its authority with respect to that law; on the other hand, if any of these four laws relate to matters of State concern, then the General Assembly has acted within its authority with respect to that law.

Guided by these principles, we now consider each of the four laws in turn.

II

Chapter 252, Laws of Maryland 1971

Chapter 252 repealed §612 of the Code of Public Local Laws of Kent County (1968 Edition). This section had established a Kent County Shoreline Commission to regulate bulkhead lines, shorelines, and fill lines along the shorelines of Kent County. The title of Chapter 252 notes that the matters regulated by the Kent County Shoreline Commission “[are] now regulated by the Wetlands Act of 1970.”³

The Wetlands Act provides for the licensing by the State Board of Public Works of the dredging and filling of State wetlands and for the regulation by the Department of Natural Resources of the dredging, filling, and other alterations of private wetlands. The Act is essentially concerned with protecting navigable and tidal waters and the

³The Wetlands Act of 1970 was first enacted by Chapter 241, Laws of Maryland 1970, as Article 66C, §§718 through 731 of the Maryland Code. It has since been recodified as §§9-101 through 9-310 and §9-501(d) of the natural Resources Article.

natural resources in them. It is a well-established principle of law that these waters⁴ and the land under them are held by the State for the benefit of the public. *Department of Natural Resources v. Mayor and Council of Ocean City*, 274 Md. 1, 5 (1975), even though certain of these lands may have been conveyed to private parties, *Board of Public Works v. Larmar Corp.*, 262 Md. 24, 47 (1971).

The protection of wetlands clearly is a matter of concern to the State, and the Wetlands Act has been recognized as statewide in its application. *Id.* At 51. Consequently, we believe that the abolition of a county board previously established to regulate wetlands is well within the residual power of the General Assembly to legislate for code counties with respect to matters of State concern,⁵ and, therefore, that Chapter 252 is constitutional.

III

Chapter 816, Laws of Maryland 12974

Chapter 816 (which as then House Bill 1507, this office approved for form and legal sufficiency in a bill review letter of April 24, 1974) repealed §§368 through 377 and amended §§2, 98, 225, and 269 of the Code of Public Local Laws of Kent County (1968 Edition). These sections concerned the selection and compensation of jurors and contained various references to courts and fines. The title and the preamble of Chapter 816 state that its purpose is to eliminate certain conflicts between the local laws of Kent County and current State law and practices. Among the provisions of State law reflected in Chapter 816 is the establishment of the District Court. The District Court is established by Article IV of the Maryland Constitution; and Section 1 of that Article vests the State's judicial power in various courts established by the Constitution and, in one instance, by the General Assembly.

The judicial power clearly is a power of the State itself. *See Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 426, (1962). Consequently, we believe that the General Assembly may enact legislation for a code county to conform its local laws to the provisions of the State Constitution and law that concern the State's judicial system, and, therefore, that Chapter 816 is constitutional.

IV

Chapter 284, Laws of Maryland 1977

Chapter 284 (which, as then House Bill 1937, this office approved for form and legal sufficiency in a bill review letter of April 25, 1977) repealed §§234 and 235 of the Code of Public Local Laws of Kent County (1968 Edition). Section 234 had enlarged and divided the third election district of Kent County into two precincts; and §235 and provided for the appointment of election officials in these precincts by the Board of Supervisors of Elections of Kent County. The title of Chapter 284 notes that the repealed provision are "obsolete or conflict with Article 33 of the Annotated Code of Maryland."

The Court of Appeals has noted that the General Assembly enacted Article 33, the State Election Code, in response to the directives of Article I, §7 (formerly Article III, §42) and Article III, §49 of the Maryland Constitution. *County Council v. Montgomery Association*, 274 Md. 52, 60 (1975). Article I, §7 provides that:

"The General Assembly shall pass Laws necessary for the preservation of the purity of Elections."

Article III, §49 provides that:

"The General Assembly shall have power to regulate by Law, not inconsistent

⁴Under Maryland Law, navigable waters are those that ebb and flow with the tide. *Van Ruymbeke v. Patapsco Industrial Park*, 261 Md. 470, 475 (1971).

⁵Because the Wetlands Act of 1970 specifically leaves unaffected a local wetlands law for Worcester County and the authority of the Worcester County Shoreline Commission (*see* Section 3 of Chapter 241, Laws of Maryland 1970), the County of Appeals has concluded that the local law is to operate "in concomitance with the Wetlands Act of 1970." *Board of Public Works v. Larmar Corp.*, 262 Md. 24, 55 (1971). Nevertheless, the Court has recognized that providing special protective measures for wetlands in particular locales is not inconsistent with the view that wetlands are a matter of State concern. *See Potomac Sand and Gravel Co. v. Governor of Maryland*, 266 Md. 258, 273 cert. Denied 409 U.S. 1040 (1972).

with this Constitution, all matters which relate to the Judges of election, time, place and manner of holding elections in this State, and of making returns thereof.”

The Court of Appeals concluded that these provisions contemplate “that the regulation of elections would be the province of the State Legislature.” *Montgomery Ass’n*. at 60. Moreover, in view of the comprehensive statutory scheme of Article 33 for State control of the election process at both the State and local level, the Court also concluded that the General Assembly “intended that the conduct and regulation of elections be strictly a State function.” *Montgomery Ass’n*. at 62.

Thus, the electoral process is clearly a matter of State concern, and the State has preempted the governmental regulation of this process. Consequently, it cannot be doubted that the General Assembly may exercise its residual power over State affairs to repeal the local laws of a code county that purport to create precincts and provide for the appointment of election officials by the election supervisors,⁶ and, therefore, that Chapter 284 is constitutional.

V

Chapter 733, Laws of Maryland 1977

Chapter 733 added a new §475–D to the Code of Public Local Laws of Kent County. This new section purports to require the County Commissioners of Kent County to appoint a people’s counsel to represent the interest of the public in zoning matters before the Zoning Authority, the County Board of Appeals, and the courts.

In a bill review letter of May 25, 1977, reviewing then Senate Bill 825, this office noted that the constitutional definition of “public local law” could be construed to forbid the General Assembly from *amending existing* public local laws, but to permit the General Assembly to *enact new* local laws. According to the Bill the usual presumption of constitutionality, the letter concluded that this new enactment was not clearly unconstitutional. However, after further reflection on the matter, we subsequently have concluded that the definition of “public local law” should be interpreted to forbid the General Assembly from amending existing public local laws of code counties *and* from enacting any new public local laws on subjects of purely local concern. 62 *Opinions of the Attorney General* 275, 287, (1977). We believe that this later interpretation is correct.

The establishment of a people’s counsel in county zoning matters for a code county is a purely local matter and, unless the enactment applies to all code counties alike,⁷ is not within the residual power of the General Assembly over matters of State concern. Consequently, we believe that the General Assembly exceeded its authority in the enactment of Chapter 733, and, therefore, that Chapter 733 is unconstitutional.⁸

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*Principal Counsel,
Opinions and Advice*

⁶Article 33, §2–12 provides generally for the division of election districts into precincts, Article 33, §2–7 provides for the appointment of election judges.

⁷See Article XI-F, §v4 and 5, reviewed at note 1 above and accompanying text.

⁸Should the government of Kent County wish to continue or establish an office of people’s counsel, it clearly may do so by local enactment adopted under the authority of Article XI-F, §3 of the Maryland Constitution and Article 25B of the Maryland Code.

Appendix B

Table 1
FORMS OF COUNTY GOVERNMENT

<u>Issue</u>	<u>Commission</u>	<u>Charter</u>	<u>Code</u>
*Structure of Government	Specified in State law. General Assembly may determine through legislation.	Specified in Charter. Must provide for an elected Council. Possibly an elected Executive or appointed County Manager.	County Commissioners determine structure through local enactments. No change required. Must retain title County Commissioner.
*Enact, amend or repeal public local laws	Commissioner authority limited. General Assembly has full power to legislate for County. Commissioners may enact ordinances where authorized by Express Powers (Article 25) enabling legislation, or public local laws.	Council can enact, amend or repeal laws on matters covered by Express Powers (Article 25A) and matters not specifically enumerated (“police power”). General Assembly may enact laws applicable to two or more counties (public general laws) even if covered under Express Powers.	Commissioners can enact, amend or repeal laws on matters covered under Express Powers for Commission counties (Article 25), Code counties (Article 25B), and Charter counties (except for 25A, Section 5, A, P & S). General Assembly may enact public local laws covering an entire class of Code counties.
*Bonding Authority and Indebtedness	General Assembly must specifically authorize. No statutory limitation. Not subject to referendum.	Council authorizes, subject to maximum indebtedness of 15% of assessable base. Not subject to a required referendum, but most Charters contain a referendum requirement.	Commissioners authorize. No statutory maximum, but General Assembly may establish a limit. Subject to referendum if petitioned by 10% of voters.
Tax caps	General Assembly may establish.	Charter may contain a tax cap if it does not pre-empt authority of Council.	Commission may not enact a tax cap. General Assembly may, however, enact a tax cap for a Code county.

Errata
Appendix B

Table 1

FORMS OF COUNTY GOVERNMENT

<u>Issue</u>	<u>Commission</u>	<u>Charter</u>	<u>Code</u>
*Referenda	Public local laws subject to referendum if petitioned by 10% of voters. May enact public local laws contingent on approval at referendum.	Charter may specify types of laws contingent on passage at referenda.	All legislation subject to referendum if petition is filed containing 10% of registered voters.
*Enact new forms of taxes, license fees, or franchise fees not expressly authorized.	General Assembly authorization required.	General Assembly authorization generally required for new taxes. Council may create new forms of license or franchise fees.	General Assembly authorization required. Cannot create new taxes, license or franchise fees not authorized at time County acquires Home Rule status.
Tax credits	General Assembly authorization required.	General Assembly authorization required.	General Assembly authorization required.
*Impact fees	General Assembly authorization required.	General Assembly authorization required.	Commissioners may establish impact fees.
Planning and Zoning authority	Subject to Article 66B.	Exempt from most provisions of 66B. May establish own procedures.	Subject to Article 66B.
Ability to declare/levy civil infractions/fines for enforcement of laws.	Must be specifically authorized by General Assembly.	Council may enact civil fines and penalties subject to limitation.	Commissioners may enact subject to specified limitations.

Appendix B

Table 1

FORMS OF COUNTY GOVERNMENT

<u>Issue</u>	<u>Commission</u>	<u>Charter</u>	<u>Code</u>
<p>Development excise taxes</p> <p>*Formality of Legislative process/procedures</p> <p>Number of Commissioners/ Councilmembers; method of Election of Commissioners; alternative form of Board composition</p> <p>*Compensation of Commissioners</p>	<p>Must be authorized by General Assembly.</p> <p>Much less specific in law than other forms. No provisions covering legislative days; emergency bills; publication of proposed bills.</p> <p>Determined by General Assembly for each Commissioner county.</p> <p>Only General Assembly sets. Informal salary board may be established to make recommendations to General Assembly.</p>	<p>General Assembly must authorize.</p> <p>Formal. Constitution specifies requirements Charter must contain. Publication, notification, # of legislative days specified. Individual Charters provide for substantial detail.</p> <p>Specified in Charter. Change requires Charter amendment submitted to voters.</p> <p>Annotated Code provides that Council may provide for a Commission empowered to set compensation and allowances. Council may reduce or reject, but not increase. Council establishes compensation of County Executive.</p>	<p>Commission may enact a school construction excise tax. May enact an agricultural excise tax (up to \$750 per lot) for purchase of TDRs if County is not levying a development impact fee.</p> <p>Formal. Annotated Code specifies precise format; maximum # of legislative sessions; public notification requirements; provisions for emergency bills; effective dates; publication of proposed bills, etc.</p> <p>Commissioners may determine through enactment of public local laws.</p> <p>Same as Charter. Commissioners may enact recommendation of a salary Commission established by ordinance.</p>

Appendix B

Table 1

FORMS OF COUNTY GOVERNMENT

<u>Issue</u>	<u>Commission</u>	<u>Charter</u>	<u>Code</u>
*Process of changing Form of Government	No change required.	Very complex. Requires appointment of Charter Board to write a Charter. Charter must be written and voted on. May entail a special election. Dates for switch over as specified in Charter. ~Likelihood of passage small based on past history. No successful Charter enactment since 1974. At least 10 efforts defeated.	Relatively simple. Requires hearings on changing the form and a vote at a general election. Upon adoption, no change in structure required. No formal document drafted or voted on. ~Likelihood of passage much better. Five such enactments since 1974 out of 8 attempts.
Ability to establish separate Police and Corrections Departments	Requires General Assembly approval. Commissioner counties generally have authority to create Police Depts.; but Charles County must have General Assembly approval.	May be done through Charter provisions.	Corrections Dept. or Warden may be done through enactment by Commissioners of a public local law. Establishment of Police Dept. would still require General Assembly approval.

Appendix C

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